Transnational Elite Self-Empowerment and Judicial Supremacy

Reply to Conor Gearty's review of *Transnational Networks and Elite Self-Empowerment: The Making of the Judiciary in Contemporary Europe and Beyond* (OUP 2018)

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This note is in reply to a review of my monograph *Transnational Networks and Elite Self-Empowerment: The Making of the Judiciary in Contemporary Europe and Beyond* (OUP 2018) by LSE Professor Conor Gearty, Vice-President of the British Academy titled *The Courts in Europe Today: Subverting or Saving Democracy?* published in *European Constitutional Law Review* 16 (2021) https://cup.org/2KcqRKi **.** I would like to express my gratitude to the British Academy for sponsoring the research underlying my monograph and to Prof. Gearty for reviewing it at such length. He is enviably qualified to draw on first-hand observation as a human rights lawyer to critique my reasoning and make the opposite case with passion. I will address his subtle blend of praise and blame for the sake of advancing our understanding of latent questions of the institutional Judiciary, its design and designers, which have not garnered the scholarly attention that many recent events urge. I hope my rebuttal may rise to the challenge of being commensurately incisive in the pursuit of the truth which we both seek, and that readers might discern a synthesis emerging which could supersede each of our contributions.

Let me first summarise my monograph for those who have not read it. I ask merely that readers patiently attend to the following, that I may establish an overarching context. It begins with the new democracies in Central and Eastern Europe (CEE) after the fall of Communism. Their Judiciaries were all patterned on an institutional blueprint I called "the Template" created by interveners, members of a transnational, elite community of interest in public policy I called "the Network Community". The Template empowered Judiciaries at the expense of the national majoritarian institutions, part of a worldwide trend since 1990 to transfer power away from representative government toward non-majoritarian, often supra-national organs. This transfer in a practical sense privileges judges and other legal professionals over "political" actors; as well, indirectly, as the Network which the elites amongst them identify with; – rendering the Judiciary no longer a "co-ordinate" or co-equal branch of government but systematically super-ordinate to the other two. The Template was made an informal condition of acceding to the European Union, suggesting an inference that the Commission regards Judiciary supremacy, or "Juristocracy" as Gearty and his colleagues term it, as prerequisite to or at least ideal for the supremacy of EU law. This is one instance of elite self-empowerment through popularly unaccountable institutions; others include central banks, administrative bureaux, intelligence agencies, even elite media. In CEE, Juristocracy has been everywhere formally institutionalized but nowhere questioned (until quite recently) by the politicians and publics most interested because most entangled in it; – unlike in America, the land of its ulterior origin.

The Template is tripartite: (1) a Constitutional Court monopolising constitutional interpretation; (2) a Judiciary Council enshrining self-government by judges "accountable to themselves" only, *i.e.* a "state within the state"; and (3) an autonomous Academy implementing judicial training. In my monograph I detailed reasons for objecting to each of them; for instance, the Italian Judiciary Council on which the Template Council is modelled is famed for autonomy but hardly for impartiality. In CEE, where domestic judges are notoriously corrupt and partisan, this is drastically worsened.

But the deeper corruption is the one no one recognizes, the empowerment of a transnationally oriented *crème de la crème*. The actuality and makeup of this Network I became very familiar with from well over one hundred semi-structured elite interviews. It is an "actor-constellation" who conceive, advocate, and act to implement a Judiciary revision which is nothing like the classical judiciary governance of England, or of America before the 20th century. I watched the agency of a minority of elites prevail in every nation-state, against a backdrop of "veto-player dormancy", as I called it, an odd phenomenon whereby those with all power to veto their own disempowerment do nothing and let it happen. Elite self-empowerment and veto-player dormancy seem interdependent and co-constitutive. Perhaps the veto-players are co-opted. More research into this phenomenon is called for.

The "immense researches" Prof. Gearty has credited me with revealed with great evidentiary uniformity that the kernel of European judiciary revisionism lies in an

> elite community of interest consisting of overlapping, inter-locking professional associations, non-state actor coalitions, supranational functionaries which prominently feature jurists of every description … a veritable 'network community' of political and quasi-political actors, most having a legal background though not all. Their collaborations concentre *inter alia* on formal domestic constitutions especially the institution of the Judiciary … activities promoting this objective span law, politics, and academia. The community has found it advantageous to organize itself through the medium of the organs of the Council of Europe (CoE), the 'cadre' or operational core around which it has evolved in the last thirty years. All these networked-in individual and collective actors are inter-dependent to such an extent, and with such potency, that even without formal jurisdiction, they [may be] regarded as *fontes et origines* of practical, politically consequential authority (p. 6).

Its members share a sense of identity, solidarity, and collective agency; a culture of consensus serving to consolidate power by damping internal conflict; coordination and interdependence through Europe's supranational organs; and the exclusion or marginalisation (even condemnation and public shaming) of outsiders who deviate from its norms (*e.g.* the Template). Behavioural "conditioning" is nothing new in political science; its efficacy is well-documented by social psychologists and by international relations scholars studying compliance with international norms under "social influence mechanisms" (Johnston 2001).

Once cemented in constitutions, the Template has far-reaching consequences for self-government. It *institutionally trains* judges to overwrite public policy with "their own" (their elite preceptors') preferences on the spurious basis of constitutional texts in fact silent on the issues at bar; and to pretend to a Last Word in policy contests with elected representatives. They are not always to apply existing law to those in jeopardy, but sometimes to apply no law except the demand of plaintiffs often in none but hypothetical jeopardy, who merely want their own way even if it ruins civil defendants and tramples the consent of the governed. The latest example I know of is an ECJ Advocate General's pressurizing the Romanian courts in a "non-binding" opinion that they legislate a same-sex marriage right from the bench, though it never existed before in any constitution or statute or in Romania's history (Gillet 2018).

What is worse, juristocratic proceedings condemn defendants unilaterally, overriding the separation of powers structurally embodying the presumption of innocence. Using early America as counter-template, defendants enjoyed multiple chances to be found innocent both *ex post* and *ex ante* judicial decisions: Congress could refuse to enact prohibitions *ex ante* or enact bills of indemnity *ex post*; Presidents could veto or decline to prosecute *ex ante* or pardon *ex post*. To find *guilty* required the unanimity of all three Branches of government; one demurror could quash the proceedings prospectively or retrospectively, leaving the "defendant" (whether at bar or not) effectively "innocent", hence at liberty and in possession of life and property. Judicial supremacy bypasses these subtle but freedom-critical checks and balances by proceeding directly to a finding of "guilty", in which the other two Branches have no input (are indeed expressly excluded), on no other basis than the text, or pretext of a constitution or treaty; entailing a costly subversion of legislative transparency and legal certainty. No longer adjudicators of guilt or innocence under *existing* law, juristocrats become czars of a forward-looking policy project whose will *is* law; thus, the "judicialization of politics".

Disseminated throughout Europe in the name of the rule of law and judicial independence, the Template was crafted by a few to empower themselves and their class. What do I mean by "self-empowerment"? At its most elementary, judges were ensconced in their state within the state by formal abolition of the last remaining checks on their power, or by an informal norm, a blind presumption that court decisions are the Last Word by a government body not just on the innocence of one in jeopardy, but on everything from constitutional meaning to public policy, even to the scope of their own jurisdiction over all the other government bodies. East Europeans when they rubberstamped the Template understood none of this. Thence originate all the controversies now raging over Hungary's and Poland's judiciary reforms and to a lesser extent Romania's.

National politicians who run afoul of the Template face an aggressive metropolitan media, *e.g.* BBC (2020) https://www.bbc.co.uk/iplayer/episode/m000ppdj/hardtalk-judit-varga-minister-of-justice-hungary. Note the power differential in this one exchange. The talk is "hard" only on selected targets and the media's own policy preferences are Networked-in but not transparently. The interviewer associates "rule of law" with "the EU's fundamental principles", but explains neither, then evades the

interviewee's simple query, "Can you define the rule of law? What does this mean?" What does it mean, indeed, and who gets to say so for us all? It is the first point Prof. Gearty makes:

> ***Conor Gearty: In a major new book, as excellent as it is disturbing, Cristina Parau takes aim at a discrete but significant part of what most lawyers assume is an unalloyed social good: the growth of the rule of law in what the sub-title claims is "contemporary Europe and beyond" (p. 3).***

A fine but important distinction is, I did not write the book about the rule of law but about "the rule of law *not men*" in the complete, traditional phrase. From the fact that "not men" was conveniently truncated, I surmise that someone disliked tradition teaching folk whom to mistrust. Are we quite sure what rule of law is? Tradition reminds us what it is not, namely, my subject-matter: a pan-European but historically a trans-Atlantic and so a transnational community of networked elites who, because their natural rivals for power were "dormant", carried through a Template which subtly conflates the rule of law with their self-empowerment as men: by precluding the *essential contestability* of law that made it Objective Spirit in Hegelian terms, beyond capture by faction, caste, cause, or professional corps. As I wrote in the monograph,

> The meaning of constitutions, especially, must be contested by multiple, competing authorities, between multiple levels and branches of government, governing elites, and the people qua political electors (or jurymen), if they are to have any meaning at all independent of a privileged body of interpreters … A text must be contested to have any objective meaning, or it will not exist (but for its bare facticity) apart from the preferences of those empowered to override all other preferences. (p. 169).

Contestability is precluded by excluding all other men from the contest, leaving judges (and the Network Community to which they belong) in effortless possession of the field of play. This is not the rule of law; it is the rule of men calling itself "the rule of law".

If early American authority on this matter is wanted to buttress the point, consider US President Andrew Jackson (1767-1845) on the essential contestability of law when he vetoed Congress's renewal of the Federally chartered national bank, which the Supreme Court had ruled constitutional. In expounding the state of play, Jackson unwittingly handed down to us a candid snapshot of how early America went about interpreting its Constitution:

> It is maintained by the advocates of the bank that its constitutionality in all its features ought to be considered as settled by precedent and by the decision of the Supreme Court. To this conclusion I can not assent. Mere precedent is a dangerous source of authority, and should not be regarded as deciding questions of constitutional power except where the acquiescence of the people and the States can be considered as well settled. So far from this being the case on this subject, an argument against the bank might be based on precedent. One Congress, in 1791, decided in favor of a bank; another, in 1811, decided against it. One Congress, in 1815, decided against a bank; another, in 1816, decided in its favor. Prior to the present Congress, therefore, the precedents drawn from that source were equal. If we resort to the States, the expressions of legislative, judicial, and executive opinions against the bank have been probably to those in its favor as 4 to 1. There is nothing in precedent, therefore, which, if its authority were admitted, ought to weigh in favor of the act before me … If the opinion of the Supreme Court covered the whole ground of this act, it ought not to control the coordinate authorities of this Government. The Congress, the Executive, and the Court must each for itself be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others. It is as much the duty of the House of Representatives, of the Senate, and of the President to decide upon the constitutionality of any bill or resolution which may be presented to them for passage or approval as it is of the supreme judges when it may be brought before them for judicial decision. The opinion of the judges has no more authority over Congress than the opinion of Congress has over the judges, and on that point the President is independent of both. (Jackson 1832)

How far this is from constitutional courts! How much more democratic! What Jackson's epitome reveals

– *en passant* with no stake in our debate – is an informal culture of interpreting organic and constitutional law by consensus. Meaning emerged from the democratic deliberations of all three branches, the States and the people, not just apex judges. The rule of law not men is such a process of contestation that the whole body politic partakes of. It bears some resemblance to the EU's culture of consensus in legislation – minus the democratic deficit.

Now, Gearty is a human rights lawyer and he may be thinking, "Do we want human rights to be decided by the 51%?" I agree, the answer should be No. But the different kinds of decision hinge on the boundary between "cases of a judiciary nature", as James Madison termed it, and all other cases. The Convention he steered forbade, with spontaneous unanimity, the Supreme Court *to decide for itself* this boundary, as witness Madison's *Notes*:

> Dr. JOHNSON moved to insert the words, "this Constitution and the," before the word "laws." [*viz*., "The judicial Power shall extend to all Cases, in Law and Equity, arising under *this Constitution,* [*and*] *the* Laws of the United States, and Treaties made, or which shall be made, under their Authority …" – U.S. Constitution, Article III, Section 2]
>
> Mr. MADISON doubted whether it was not going too far, to extend the jurisdiction of the court generally to cases arising under the Constitution, and whether it ought not to be limited to cases of a judiciary nature. The right of expounding the Constitution, in cases not of this nature, ought not to be given to that department.
>
> The motion of Dr. Johnson was agreed to, nem[ine] con[tradicente, not even Madison], it being generally supposed [by Dr. Johnson too], that the jurisdiction given was constructively limited to cases of a judiciary nature. (Monday, August 27. In Convention)

Regardless how "cases of a judiciary nature" might be gamed, they forbade the Supreme Court to take the activist route of making up its own jurisdiction; or else the Framers should have to be imputed as taking with one hand powers that they give back with the other. It follows that the doctrine of justiciability, the judicial demarcation of the judiciary / non-judiciary boundary, is the Last Word *never*. The Framers implicitly empowered either other Branch to check the Supreme Court without its permission. With that, judicial supremacy collapses. Contrast that to the Israeli Supreme Court saying everything is justiciable (see Hirschl 2004: 196)! It would be interesting to learn where Prof. Gearty would draw this line, and why.

What constitutes a case of a judiciary nature is in fact self-evident. As hinted above, the *locus classicus* is the case of a subject whose life, liberty, or property is *in jeopardy* before Leviathan which may lawfully take these supreme goods from the guilty. Where no actual jeopardy is found, there is no judiciary case. (Civil litigation between private parties comes under this framework as enforceable, in the common law, by the threat of contempt of court, a criminal sanction.) If jeopardy is real, a decision is urgent and ought to be structurally easier to reach innocence (if liberty is the priority). *Unanimity*, *not* a non-majoritarian but a hyper-majoritarian rule of decision, is liberty's traditional best defence. The separation of powers is like jury unanimity writ large. All branches independently must concur in guilt; if one defects, then the subject is innocent and free. The cases are "judiciary" because guilt or innocence is determined, even though all branches play a role (if they will but act), and the Judiciary has no Last Word, automatically. President Jefferson nullified the Alien and Sedition Acts that infringed the freedom of the press – (upheld by the Supreme Court of course) – by pardoning all who had ever been convicted under them.

American courts did not lack independence prior to US Chief Justice John Marshall's self-empowerment in *Marbury v. Madison*, 1 Cranch 137 (1803). The courts have inherent power to vindicate civil rights by finding innocent, but the same power is in the other branches. The most basic due process is a subject's *right* to a determination, by act or inaction, of his guilt or innocence by each and every one of the three Branches, in any order. Objective constitutional meaning in judicial-type cases emerges as a mosaic of tripartite "verdicts". All other constitutional cases consist not of adjudications but of political, including electoral contestations. Both ethically and pragmatically, interpretation in any such cases is best left to unhurried deliberation (except arguably in emergencies), not to elite discretion masquerading as rule of law. Everyman has a constitutional right to partake (if only vicariously) in contesting the constitution if no person in jeopardy is prejudiced. Only when life, liberty, or property hangs in the balance does a rule of decision need to be expeditious and univocal.

It is noteworthy that American capitalists spawned judicialization. In *Lochner v. New York*, 198 U.S. 45 (1905), the Supreme Court exploited the Fourteenth Amendment of the US Constitution to "strike down" a New York State labour reform law opposed by employers. It proceeded to a *unilateral* finding of State guilt for "violating" a constitutional amendment!! No Act of Congress defined New York's act as unlawful, nor had any US Attorney brought one charge. For the sake of a private plaintiff, Joseph Lochner who owned a bakery, the due process set up by separation of powers was bypassed, granting an exorbitant privilege (mislabelled a right) to those disaffected with the majority, and to courts in policy contests with the other Branches. The Lochner era of Business influence waned in 1937 with *West Coast Hotel Co. v. Parrish*, 300 U.S. 379. The Court still exploits the Fourteenth Amendment to bypass the most basic due process, which is called "Lochnerizing" it, nowadays to exorbitantly privilege New Deal statism. In *neither* case did the Supreme Court have valid jurisdiction: – that is the primary point. And the President and Congress were dormant.

To "Lochnerize" is to exploit constitutions against life, liberty, or property "in a good cause". It flouts *that* rule of law, which arises from a separation of powers. The common law, resting on twelfth-century royal writs, predated this separation, but kept judge-made guilt in bounds by other means: first, the timeless morals of the king's chancellors who were also churchmen, and second, Parliament's power to override judges by statute. The Americans' invention of a master-document constitution upset this equilibrium, when shrewd judges discovered basing their rulings on *The* Constitution shielded them from legislative override. This was the kernel of Lochnerization, – and therefore of constitutional courts, that fatal error in political-legal reasoning.

> ***Conor Gearty: Deploying a rare level of knowledge of what lurks on the borders of law and political science, Parau locates the growth of judicial power in ostensible democracies in a well-informed historical context and then deploys all her writing skill … to try to get the reader to see how implausible, heretical even, the exercise of such power is from a democratic point … But what of […] "most sacred, indeed robust traditions" that are being challenged … by the Network? We know from the text that whatever is being wrongly undermined is from the pre-Communist past of Central and Eastern Europe countries, not that immediate past. (This is presumably because Parau sees Soviet absorption and/or control as being more akin to an imperialist intrusion than an indigenous growth; she is certainly hostile to Soviet-imposed traditions in Central and Eastern Europe) … Parau is coy about exactly which pre-Communist traditions are being destroyed by the new framework … Maybe all traditions have to be wholly indigenous or they count for nothing? But what can this possibly mean? (pp 6 -7).***

Prof. Gearty read more into my words than I intended. I did not make it clear enough: the pre-Communist traditions I defend were checks and balances on judicial output known by local jurists to enhance justice for ordinary people: election of judges; trial procedure that included "lay judges" (non-legal professionals with life experience of local society); *recurs în anulare* [recourse in annulment], a General Prosecutor's right to exact rehearing of impugned judicial rulings (available before 2010). The Communists continued these checks. Of the traditions they liquidated I know too little to recover them even in theory. All that was left the Template toppled flat. Manifestly, a network without ambition to rule through democratically unaccountable judicial power has no reason so absolutely to overwrite harmless national traditions.

Prof. Gearty's surmise that I oppose foreign ideas is another bit of inattention. Europeanization inspired an informal project of melding Roman law with English common law. Given its progress and its implicit "Anglo-Saxon" orientation (as the Continent had only the Roman tradition), what Europeans might wish to consider – according to my monograph – are precisely English and American precedents before the juristocratic *coup d'Etat*. Many pages of my monograph are devoted to the democratic practices of the early American Republic before judicial supremacy; what can be learnt therefrom; and how it contrasts to Network thinking, which actually undermines the rule of law (not men) and the judicial independence that was the norm in England for centuries. The Westminster model (before Blair) troubled the Network as an alternative to the Template capable of inspiring imitation. Westminster entire, with its social class-based constituencies, may not be replicable elsewhere, but elements of it – *e.g.*, the Lord Chancellor's triangular accountability to Cabinet, Parliament, and Bar – might be tried instead of constitutional courts and judiciary councils. In fact, Italy did experiment with the common law, and though it failed, much was learned (Del Duca 1991). But instead of East Europeans being nudged toward Britain or Norway, the Template was rather shoved on Britain. I never discovered any justification for Blair's reforms, creating

a Supreme Court and abolishing the Lord Chancellor, except blind adherence to the Template. To my knowledge none has claimed the Law Lords or the Lord Chancellor lacked independence, entanglement with Parliament and the Government or no. If it was to secure rights Parliament cannot override, all of Westminster militates against it; a republic should be needed.

No one disfavours judicial practices that deliver the rule of law not men. It is conceded on all sides that English and American courts were independent before they overreached on the pretext of constitutional interpretation. The Network's axiom "only supremacy is independence" contrasts smartly with classical understandings. Yet Europe has uncritically embraced new-fangled, American-style judicialization ever since it *in its infancy* inspired Hans Kelsen, who adapted it in the 1920s by inventing the constitutional court, now the ubiquitous Template icon. Latterly, however, as its remote implications have ripened, it has begun to cause controversy, especially in Eastern Europe (although nowhere more than in America, the land of its origin).

> ***Conor Gearty: We also know that she sees the Network as having done damage further afield, in "contemporary Europe and beyond". I am from Ireland … which strikes me as fitting the template of a country where many "sacred" traditions have been successfully challenged. And thank goodness they have been! The little town I grew up in saw a girl in my sister's school die giving birth – outdoors and alone, under a statue of the Virgin Mary beside the local parish church – rather than admit to anyone that she was pregnant … One of my great heroes of Ireland is David Norris, who successfully established that the criminal prohibition on homosexual practices was a breach of his right to privacy … The Network may have helped open our eyes but they did not determine what we saw, or make us choose our route (pp. 6-7).***

Here Prof. Gearty uses the journalistic technique of citing the most extreme, emotional instance, a pitiful Irish girl, to suggest this would be normal unless judicialization normalized homosexuality or "rights" like abortion. To this inverted logic he adds guilt by association to imply the Church made her suffer. But is this fair? Didn't Christ say about the woman taken in adultery, "He that is without sin among you, let him first cast a stone at her"? After the mob had left, he said, "Where are thy accusers?" She said: "No man, Lord". He said, "Neither will I condemn thee." But … did he say she had a *right* to adultery? Rather, he said, "Go, and now sin no more." This proceeding leaves the door open for further deliberation and is as relevant now as it was then. A right would have "licensed" her, yet sins of the flesh are *not* victimless. They cause harm on an epic scale that dwarfs the hand-picked anomaly of one pregnant girl. Who can forget the harrowing Victorian photograph of the 10-year-old boy whose eyes were gone and face eaten away by congenital syphilis? or the abandoned Romanian AIDS babies in the news worldwide *ca*. 1990?

Due process under the Irish constitution was accorded Gearty's hero, yet the outcome did not advance the Network agenda. Norris appealed to the European Court of Human Rights thinking its activist judges might sympathetically bend the "rule of law" for him. They obliged as the US Supreme Court had obliged Lochner, *unilaterally* finding Ireland "guilty" for failure to find homosexuals innocent. A procedural right to privacy against police breaking down doors or bugging telephones without judicial warrant is justified, but the Convention heavily qualifies the *substantive* right to a private life (not "privacy"): "no interference … with the exercise of this right except … for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A substantive right such as the Network applaud is never so unproblematic as applause would suggest. It is a legal rule whereby the court must hold one harmless no matter how much harm one has caused. Summary judgment is owed the defendant, shutting down the due process of law before it can begin, – otherwise one has no right and the case proceeds to trial. What rationalizes such a shocking rule? The *locus classicus* is free speech: except for personal defamation it is exempt from trial, regardless of the possible merits of the plaintiff's case; an outcome unthinkable before common law judges weighed the government's own imperfections into the balance. They excepted from Roman Law to prioritise closure over perfect justice, first because process is punishment if interminable, and second, when government is incompetent, its proceedings may cause more harm than it saves. They concluded that government was incompetent to police the search for truth (especially in religion), a public good deemed so valuable that it is "privileged" by substantive right. This may be why substantive rights did not exist anciently.

Accordingly, the Framers of the US Bill of Rights were cautious to privilege only two public goods, either procedurally or substantively. The first is the search for truth, embodied in free speech but in defence

against self-incrimination, too, lest torture-coerced lies are admitted into court. The only other privileged public good is the right to self-defence, especially against the central government; reflected in the right to keep and bear arms but also in the right to legal counsel competent to defend one against prosecution by the state Leviathan. The Fourth through Eighth Amendments protect the search for truth in court but also help defend oneself from the government. The Ninth and Tenth Amendments defend the States and People collectively against Federal encroachment. Why should anything else be so privileged? We think if truth or self-defence causes harm, the harmed probably deserved it. If pleasure-seeking causes harm, do AIDS babies deserve it?

Truth is the highest good, and self-defence the law of nature. But what are the merits of sexual pleasure or convenience weighed up against the immense harm done especially to innocent children, who are procreated by sex? Privacy may be meritorious, but not if it exempts acts causing harms which do not in fact stop at the bedroom door. Without sex nobody would be left to seek truth, but extra-marital, non-procreative sex does not help with that. How is pleasure-seeking a public good so overriding that its pursuit is always valuable to all of the innocent?

Substantive rights shutting off the process of law can cause enormous harm. US Supreme Court Justice Oliver Wendell Holmes in *dicta* in *Schenck v. United States*, 249 U.S. 47 (1919) reasoned that "falsely shouting fire in a theatre and causing a panic" is not rightful free speech. However, to punish the shouter who is somehow known to be false risks punishing one who shouted "Fire!" thinking it true yet turning out mistaken after causing some poor soul's death by trampling. Unless he conveniently has a "history", it may be impossible to ascertain in court if the shouter was honest or not. If the law gets reputed for punishing "mistakes" in such circumstances, even more may die if none dare shout fire when fire there is. So, the common law suffers a high risk of great harm, deeming it more than offset by a greater good. Holmes's confusion betokens the counterintuitive tricksterishness of substantive rights and their double-edged facility. The Framers' caution contrasts grimly with the recklessness of today's (often billionaire-funded) "activists", and warns us against exempting their ideological wish-lists from the due deliberation of salutary opposition, under colour of presuming wishes to be rights.

Due parliamentary or plebiscitic process deserves a chance to weigh up how unalloyed a newly claimed public good really is, as happened when classical rights were debated aborning. Majorities may have very good reasons to object. Substantive rights steamroll democratic deliberations about the merits or demerits of heroism. Charities, churches, and other voluntary organisations run programmes for young girls who get pregnant out of wedlock. Substantive rights are better kept "bottled like a genie".

I found many examples in CEE of public policy befitting the Network's agenda being judicially mandated or rammed through the judiciary, which likewise imposed unaccounted externality costs on third parties (besides the loss of self-government). Who in Academe reckons the costs of banning crucifixes in Italian schools or prisoner voting rights, same-sex marriage or post-Communist property restitution in Romania that summarily evicted lifelong tenants? From any social science standpoint, to assume costlessness is unwarranted. As Thomas Sowell (2011) has observed, "There are no policy solutions. There are only trade-offs." One trade-off is obvious to a political scientist before looking into the evidence for or against a given policy: these are not decisions being taken by voting majorities. Lack of democratic deliberation is itself a cost. Outlawing crucifixes (*Lautsi v. Italy*) might well have subverted the majority's Catholic faith and identity which, according to the Global Pew Forum, 83.3% share. Rightly, CoE member-states revolted against *Lautsi*; it just so happened that they were not "asleep at the switch" that time. But being reactionary is sub-optimal. Member states lack any real veto, except the illicit threat of non-compliance, which could recall a supranational court from its agent drift. Worst of all, CoE member-states are usually represented by legal professionals who share less the national majority's than their class's, the Network Community's assumptions, values, and identities. To cure the democratic deficit in Europe will require constitutions, national and supranational, that will enable courts that extemporize substantive rights by imposing opportunistic interpretations on a treaty to be checked and balanced. But the CoE's moribund Parliamentary Assembly and Council of Ministers answer only to the Network.

> ***Conor Gearty: To Parau, this "Europeanization of American-style judicial politicking" means that judges enjoy 'exemption from input accountability' which when "combined with output supremacy" makes the "autonomy" thereby secured "indistinguishable from autocracy" (pp. 280-281). The effect is … clearly malign. The "universal values" invented by "legal professional networks" after World War Two and clustering around the rhetoric of the rule of law and human rights "have latterly become a goad to whip the***

> ***'backward' countries of Europe into line with what the Network Community has universally defined as universal values" (p. 280) (p. 4).***

I did write these quotations. It is a pity that such selective snippets truncate key details of their context and its perspective. Zooming-in on "universal values", here is one fuller quote:

> After having been invented by legal professional networks to achieve European integration to prevent another World War, the CoE and the EU have latterly become a goad to whip the 'backward' countries of Europe into line with what the Network Community has unilaterally defined as universal values. This strategy has demonstrably slipped reasonable bounds; the whip is used for good but also evil, exposing Northern and Western Europeans to seemingly irresistible pressure to sacrifice their most sacred, indeed robust traditions (p. 280).

Gearty ignores how different today's situation is from pre-War times. I tacitly dissociated today's judicial trends from the League of Nations' universal values after WWI, for example, constructed bottom-up by the nations parties. I was chiding the drift from decisional independence to judicial supremacy that upset judiciaries needing no revision, being the "sacred and robust traditions" I meant, not Eastern Europe's. Gearty is mistaken that I reject foreign influence. I expressly commended early America and traditional Westminster. The rub is that states that ratify international conventions nowadays end up beholden to supranational organs that "discover" therein things that would scandalize the drafters; but do expand supranational jurisdiction.

> ***Conor Gearty: There is a sense reading this book that you are encountering a very scholarly version of what in the end is a rather ordinary conspiracy theory – "the invisible ascendancy of the Network community" (p. 146) that is all around us, controlling everything from the shadows. In fairness to Parau, her critique never leads her to suggest that the Network would go so far as openly to subvert democratic outcomes. Poland and Hungary remain sovereign states, and their governments have been legitimately elected (p. 10).***

A conspiracy is a joint enterprise to commit a crime, or cover up the evidence of a crime. I never claimed any such thing of the Network, nor so much as hinted any crime is committed or covered up by lobbying for a policy agenda, or by "letting sleeping dogs lie" dormant. Without a crime, where is the conspiracy? If anyone thinks a conspiracy needs no crime, – and the Network does sneak around, but as if to evade refutation, – if this is all that is meant by "conspiracy", – then why is it unmentionable? My stance is principled: its behaviour is at odds with representative democracy *and* the rule of law, although it claims to support both.

This charge is a mischaracterization on many levels. I have published on dormancy in matters judiciary. Maybe I could have made it clearer that, excepting EU accession conditionality, the Network lacks other means of coercion. Domestic veto-players could have stopped it cold. I found them asleep at the switch. I did find Network agents habitually circumventing veto points by pre-empting (typically slow) democratic processes, but I never said the Network itself reduced national politicians to dormancy. I actually said, "It is this puzzling omission of agency or, if you like, this 'dormancy' of the national polity's main veto players which has enabled the Network Community to advance and consolidate its power, especially since 1989" (p. 281). The East rubberstamped the Template for their own bad and insufficient reasons: they idolized the West; their turbulent circumstances scared them; they could not foresee the remote consequences; the urgency to transition to stable democracy blinded them to their own jurists' agendas. I never described the Network as "all around us, controlling everything from the shadows". Those are Gearty's words. It did exert inordinate influence on Eastern Enlargement and still holds too much sway, but *only* because it has – bizarrely in my view – met zero resistance from those who wield all power to resist.

The "conspiracy theory" slur was purposely designed by those who could not prevail by reason to shut down a lost debate. I do not think this was Prof. Gearty's intention. His support in continuing this debate, and his kind remarks about my monograph testify to the contrary. Nevertheless, the epithet triggers a visceral reaction, especially fear of an evil beyond control, which makes us shun facing it. These were observations made by Florida State University's deHaven-Smith, who traced the stigma's origins to the CIA. Note this from *Conspiracy Theory in America* (2014):

> [C]onspiracy deniers have accepted the conspiracy-theory label and its pejorative connotations uncritically. It would probably be too much to expect greater awareness of the CIA's conspiracy-theory propaganda program, even though it was made public in 1976, but many scholars and journalists still deserve criticism for failing to ask when and under what conditions norms against conspiracy belief emerged in elite discourse. Instead, generally they have embraced these norms and have simply assumed that conspiracy theories are patently irrational and pernicious. This has led journalists and scholars alike to search for the historical roots, not of contemporary elite norms against conspiracy theorizing, but of the supposedly delusional, conspiratorial mind-set (p. 74).

I also never claimed the Network is ambitious to control everything. It cares about what it cares about: the Template and the override it affords to a Network frustrated by the majority's inaction or opposition. It cares little about electoral systems. In the same timeframe it was imposing the Template, Romania was experimenting with proportional representation (PR), then single-member districts, then back to PR in a struggle to get government stability and accountability right. No one so much as shrugged. Try to imagine the deafening uproar if any EU member-state abolished its constitutional court! Networked-in media would amplify "outrage" over what is, after all, a policy choice.

More specific reasons why my monograph does not deserve this pejorative are, first, that it is not "just a theory"; empirical evidence of the nature, activism, and ambitions of the Network abounds. I quoted out of my many elite interviews to enable readers and reviewers to hear the protagonists in their own voices, to judge for themselves if my interpretation is justified. If not, they should take the scientific route and tell facts or reasons why not, which would advance us nearer the truth. Does a Network Community as I described exist or not? Gearty himself writes like he agrees it does. Is it the driver of the Template? When courts make public policy that the Network wants but majorities reject, are they not empowering themselves over those majorities? If this is a conspiracy theory, then Prof. Gearty indicates assent by his omission to falsify.

A second reason is that the Network Community is unknown to the public, but ought to be better known. It is not a secret, however, and partakers in the re-making of Europe's national judiciaries are well aware of this. I spoke of an "invisible ascendancy", but merely as a rhetorical device to highlight that the public does not know how little it knows. While writing his review, Prof. Gearty passed an article to me in the *London Review of Books* (Vol. 43 No. 1, 2021) written by UCLA Professor Perry Anderson. "Ever Closer Union?" contains lots of evidence corroborating our ignorance of the ECJ, a key member of the Network. Who knew it played the leading role in the "coup" (Anderson's word) that founded the EU? that it enabled or seconded acts precedent thereto? that it was entangled with the Nazi regime from its inception, which Anderson discovered in the research of University of Luxembourg historian Vera Fritz? A native-British family member of mine, on reading him, exclaimed, "I wish I had read this four years ago when I voted against Brexit." For giving us a censored, sanitized version of reality the media have to answer. Do they understand their omissions as helping the ECJ or ECtHR align their rulings with Network aspirations? If only research funding were still available for finding out!

Are Poland and Hungary, then, *conspiring* to undermine judiciary independence instead of kerbing its policy-making autocracy? Prof. Gearty must know more of the significant facts than what he lets on, when he says:

> ***Conor Gearty: … the Polish government is explicitly resisting the Network by seeking to restrict judicial independence, via a new Supreme Court disciplinary chamber designed (it is said [by whom?]) to keep the judges in line, and at very least opening their rulings to the sort of political accountability that the Network deplores. Already one judge who is critical of the changes made has had her immunity removed so as to expose her to [true?] corruption charges. The same individual had earlier been sacked without explanation from a judicial position by the Justice Minister. An academic sympathetically quoted by Parau (Wojciech Sadurski pp. 10-11) has been sued by the ruling party for allegedly defamatory tweets all … stamped with the people's' will via victory in a closely-fought democratic election … It is the same in Hungary, where the Prime Minister Viktor Orbán has (so far) successfully defied the Network to remodel the organisation of the judicial branch along more accountable lines: in Autumn 2020, for example, a new president of the Supreme Court was appointed to a nine-year term***

> ***despite the overwhelming rejection of the nominee by the National Judicial Council and disapproval of the process by the European Commission … Though this national fightback [against the Network] in Poland and Hungary has been ongoing for years, neither is treated in any detail at all in Parau's' book … The result of this kind of writing is that the book at times seems to lack nuance, particularly when the floor is given in an uncharacteristically uncritical way to critics of the Network (p. 9).***

Fair enough, just remember the evidentiary situation was too inadequate to justify adding much nuance. Readers who attend to my whole book will see that I am the chief critic, on elaborate grounds. Who can confide in the authority of an European Commission that represents judicial independence and the rule of law as coterminous with the Network's Template? Such an obtuse pretence vitiates its reports on the Hungarian judiciary, the latest of which (2021) complains of judiciary governance being devolved from the Template-made National Judicial Council to a National Office of the Judiciary and a *Kuria* designed by the Hungarians themselves, whose Presidents the Parliament horrifyingly elects – generically similar to how the US Senate approves the US President's nominees. Are we to believe such a Commission so uncritically that independence stands or falls on this difference? If so, then it has never existed before the Template. Partisans of the Commission might consult the annals of US Presidents who regretted their judicial appointments, having kidded themselves that they could control Judiciary output. President Eisenhower thought one judicial appointment his "biggest mistake"; see Simon (2018). The experience of CEE is, autonomous judiciaries foment their own miscarriages of justice; no need for undue influence from outside. Other censures in these reports hinge on equally circular reasoning. The Template is the unique answer; deviation is anathema. It matters not if it multiplies abuses so long as it is the Network's abuses.

The Network discourse Gearty reports shows signs of being "gamed". If "exposing" a judge to corruption charges infringes judicial independence, this means the independence aimed-for is so absolute, nobody can bring them to justice. This is indeed the practical effect of Judicial Councils sporting a monopoly on judicial discipline, – especially in CEE. The Commission knows it but does not seem to care. This is the rule of law? My monograph explored these issues in depth. Moreover, as a native Romanian with friends in the Judiciary working as advocates and judges, and having witnessed first-degree murder charges reduced by bribery in my home town, I can say judicial probity is abnormal there. Yet official discourse cynically represents "victim-judges" facing discipline not as a relief to the victims of their malfeasance, but as a "cynical" power play by populist bogeymen. It might be that judges and governments both are corrupt; or something else. Was the unnamed "judicial position" she was sacked from a ministerial or a judicial-administrative post? Common sense suffices to explain why this would happen to an opposition "mole". Thus did incoming President Jefferson to the eponymous Marbury for *his* shenanigans. Judges in CEE are unabashedly partisan too, as the Romanian Constitutional Court keeps instantiating; rulings are jury-rigged to overreach and discomfit the rival ruling party.

In fact, the West knows little about why Poland and Hungary are hostile to "the rule of law" and "judicial independence"; why I steered clear of them as without native-speaker assistance it was too hard to find objective information on all relevant points. We depend entirely on (Networked-in) media for everything we know about public affairs. I could not have relied on Polish and Hungarian journalists and academics to inform me. Having seen enough of their productions and become acquainted with some of them and their backgrounds, I understand what filters out to the Anglosphere is first filtered through an ideological lens oppositional to the ruling parties.

From my perspective, Hungarian and Polish breaches of this or that "EU principle" are the acts of veto-players belatedly waking from dormancy. For interested readers, I treated dormancy at length in: Parau (2013). Insofar as the Hungarian and Polish reforms arguably infringe judges' decisional independence (lowering their retirement age to conveniently vacate some seats), I flagged them as probable "ethical alloys": to rein-in constitutional courts' out-of-control jurisdiction was good, but bad if it also packed the courts (the Network packs them with impunity). My position on judicial independence was explicit:

> The English Judiciary is the *locus classicus* of decisional independence without more, who have been exempt from undue influence for centuries. Yet … judges are not even co-equal to Parliament or the Crown … (Blackstone [1765] 1809). Nor has … the Crown or Parliament [had] to obey any or all judicial decisions, though Executive officers of the Crown may be obligated to do so. … Independent adjudication is thus a means to a specific end; it is the last ordinary chance for the accused or respondent to be acquitted (p. 171).

In fine, Gearty hews to the Network, equating judicial independence to judicial (*sc*. Network) autocracy.

> ***Conor Gearty: … must the Network's prize power-house – the EU – continue to underpin the prosperity of those countries whose politicians openly defy it? Is Norway (outside the EU and therefore able to act on its own) within its rights to have withheld its generous support for those states that flout respect for what Norway thinks of as universal human rights? (We won't invade you, we promise, but we are not obliged to continue to fund your - to us - horrible discrimination and vicious behaviour towards minorities.) Should the Council of Europe say nothing while its flagship Convention on Human Rights is mocked by national leaders? Membership is not compulsory. For those determined to defy the Network and further to reassert their 'most sacred, indeed robust traditions' there is always the Brexit option, and Belarus a model perhaps of what that independence will look like if the Council of Europe is forsaken as well as the EU in the name of (as the British call it) "taking back control" (p. 11).***

How telling that Prof. Gearty should conflate the supranational Europeanizing organs with the Network! a tacit admission that *it* is the proprietary ruling class and not member-states or member-publics. Surely Hungarian and Polish national leaders knew this when they joined. I too have wondered, why don't they exit? I think they are trapped. Any such move in Eastern Europe would spark a popular revolt, because the one undoubted benefit that ordinary East Europeans derive from the EU is the Single Market's free movement of people plus FDI in cheap labour. It is EU Politics 101 that the EU empowers differentially, usually domestic elites (political, business, financial), not the "little guy". But for the foregoing, very little popular support for the EU would exist.

I also evidenced how policies imposed on member-states are often not judges' own opinions, but made at supranational level by the Network, with no input by popular representatives. Member-states are then pressurized to adopt these policies. The transaction costs of national politicians intervening *sua sponte* are prohibitive: the constant distraction of domestic affairs, re-election from which supranational judges and functionaries are exempt. Yet I censured them, too, for their electoral careerism that has devastated representative government. On how to improve democracy, see "Introduction: Democracy, Courts and The Dilemmas of Representation", *Representation: The Journal of Representative Democracy*, 2013, 49 (3), which I co-authored with Richard Bellamy.

> ***Conor Gearty: … in Parau's account who – specifically – speaks for the people? We know it is definitely not the judges and all of their supporting systems of power … But on exactly who stands for the people there is just the sort of uncertainty you would expect when trying to tie down a term as amorphous as this. Generally, Parau equates it with the winners of executive power in democratic elections … Sometimes "public opinion" is valued as a driver in itself (p. 284), and on other occasions it is a vaguer "democratic" perspective that shines through (p. 286 for example). Another candidate for the people's voice is of course – and not unreasonably – the assembly of those who are elected (eg pp. 2 and 284) but that seems to take second place in Parau's mind to the executive power that is in broader terms legitimised by those representatives. Certainly the intense hostility to the [2007] Miller decision … is otherwise hard to understand – after all, this was a case that took power away from the executive and required that it be exercised by the people's representatives in Parliament. It seems churlish (as well as factually incorrect) to deplore that victory as merely the raising of a "hue and cry about parliamentary sovereignty" with the (intended?) effect of positioning "the legal professional elite to assume a jurisdiction, the ulterior end of which is to put paid to Parliament's sovereignty" (p. 292 – almost the last words in the book). So the Network can never be right – even when it is disavowing itself for (representative) democracy it is (merely) playing a deep game (p. 8).***

Prof. Gearty's expertise is in human rights law, for which he is widely respected and admired. But my monograph is about institutions, or, case law less than organic law, and organic fact even more, from a political science perspective, *viz*. the power relations between judges and other political actors. The British and American constitutions differ foundationally. It is the Americans who divided government into Legislative *versus* Executive Branches. In contrast, when the British speak of the sovereignty of Parliament, they mean "the King in his parliament" where the powers are all unified by a common Assent

that includes the Law Lords in that House. Blair's reform abolishing them and foolishly separating the Judiciary from Parliament sets up an *inherent* rivalry between the now two halves of the state. There will always be political rivalry between men and men; this has made it institutional. American discourse has so pervaded Europe that to the query, "Who shall have the Last Word on constitutional meaning?", the canned answer is "the Judiciary". What, then, of Parliament? If the Last Word Upon The Constitution inures to the UK Supreme Court and *Miller* becomes the case that "made" parliamentary sovereignty, then it is a question of when, not if ambitious judges (the Network behind them) will exploit *Miller* to break the sovereignty which an addled Government let them make. I don't mean they will *slay* it, only subordinate it to the new apex power, no longer a European- but now an American-style constitutional court that unites all the apex courts into one. Such is my prediction, for what it is worth. If lawyers and judges have to decide whether or how Parliament is sovereign, the sovereign-maker is higher than the "sovereign". This has happened before; *e.g.*, when the Pope made Charlemagne Holy Roman Emperor. It took most of a millennium to sort out who was sovereign over whom. Case law in all this is but the tip of the iceberg; what sinks the Titanic lies below the surface.

Who spoke for the people before, during, and after *Miller*? All MPs in theory; surely some did in practice. The people speak for themselves by voting in elections *and in referenda*. Any elected institution can be purged by majority vote in an accountability contest. What else could representative democracy mean? Majority rule is glibly derogated as mob rule, yet nowhere have I advocated for judges to have no place. Classically, they check and balance State power by finding persons in jeopardy innocent. The Network by contrast empowers jurists (itself, really) to be the leading lights in public policy, not anyone emerging from a genuinely democratic process. It follows that I am badly misread as favouring the "Executive" in *Miller*. The Cabinet are all Members of Parliament. Such favour is meaningless when there is not an American-style separation of powers. An incumbent Cabinet will have an Opposition led by a shadow Cabinet and their own backbenchers may also revolt. The transaction cost of opposing and rebelling is sky-high. Cabinets are dismissed over only the most notorious controversies. This surely entered into the parties' calculations in *Miller*. All of the supposed Legislative-Executive antagonists were inside the House of Commons and could have been heard to complain there, if they had wanted a vote on Brexit. To political scientists and practitioners alike, the likelihood is MPs would have shied away from such a vote lest, antagonizing their constituents, they are turned out of office; hence the outlandish expedient of a private plaintiff, seized on by commercial as well as political elites as a desperate gambit to derail Brexit. From this perspective, one infers the Government may even have connived with the Supreme Court so to exploit Miller, and did not care if the Court exploited her to stake its own claim to the Last Word on the UK constitution under colour of "upholding Parliament's sovereignty". The political framing is what exasperates Prof. Gearty. Yet it is not such a stretch, as it mirrors Chief Justice John Marshall's trick in *Marbury v Madison*, who staked *his* claim to the king-maker's Last Word by slyly giving Madison and Jefferson everything they wanted (much to their own exasperation). *Miller* might soon be fêted as the UK's own "Marbury moment". Nothing could illustrate better the havoc wreaked by plaintiffs' lawyers empowering courts to empower their clients; who upend very systems of government, if need be, to get their way, when case law becomes the rule-all.

To do nothing is also sovereign. Parliamentary inaction finding (in effect) that the *status quo* is "innocent" creates no standing or jurisdiction in any who prefer MPs to "do something". Parliament is not sovereign if a private plaintiff can compel it to act. It is sovereign in contempt of courts, in act and in inaction, and needs no superintendent. It is error to assume that a judicial remedy in such a case should be ordinary, partly because the transaction cost is lower. Indeed, it is a political science commonplace that politicians "stiff" their constituents with impunity by offloading unpopular decisions onto unelected judges, and then blaming *them*. Neither party is the worse for it. In brief, the *Miller* case might have been such a stitch-up. In the end, the misfit between the majority and its "representatives" was resolved democratically (for once) in the European elections of 2020. The voters forsook the Tories for the Brexit Party so thunderously – the worst result in 300 years? – that it broke Theresa May and her Government's stranglehold. The ensuing domestic election yielded a new Cabinet better aligned with the majority will, who did deliver Brexit. This political *fact*, not judges decreeing whatever from on high, is the best proof that Parliament is sovereign … for now.

Transnational networking for elite self-empowerment becomes a matter of grave concern when it moves to overthrow sovereign inaction and referendum results the elite are dissatisfied with. It illustrates what I identified as their assumption of intellectual-moral superiority. This is *not* a commentary on anybody's personal character – all the world is ego-centric and none can help it, – but a critique of a cognitive bias – *i.e.* Kahneman and Tversky's bailiwick (1979), – which produces prudential and even logical mistakes

like millennia of scientific astronomy assuming earth as at the cosmic centre because there Ego stands. Prof. Gearty's discourse tends to corroborate my findings that the Network Community presumes to an intellectual and moral superiority which systematically biases elite judgment. He opened his review with Department for Education functionary Chris Heaton-Harris, who amid the Brexit referendum allegedly tried to scrutinize what universities were teaching the younger generation concerning sovereign political matters like European integration:

> ***Conor Gearty: Soon after the United Kingdom's Brexit referendum vote, a very junior member of the Conservative government, Mr Chris Heaton-Harris, wrote to university vice-chancellors asking for the names of all those involved in the teaching of European affairs in Britain "with particular reference to Brexit" – he also wanted copies of relevant syllabuses and "links to online lectures". There was something of a furore at the time, with universities resisting, and many academics scathing in their critique of what were described as McCarthyite tactics. … What is one to make of such political interventions, with their suggestion of a hidden hand of an array of malign influencers seeking to erode a nation's spirit, its sense of common purpose? … What on earth was Heaton-Harris going to do with all the power-points he wanted? Charge about the country, intervening in lectures? (pp. 1-2)***

It appears Heaton-Harris retracted immediately and got "kicked upstairs" to the Transport Ministry. Why do universities presume to be above reproach and beyond scrutiny by a public whom the state coerces to support them? An alternative explanation to ministerial McCarthyism – (both could be tested) – is so to expose the McCarthyism of academics, who do not always tolerate viewpoint diversity as they ought. Do they think, "It isn't McCarthyism when *we* do it"? Few intellectuals are left who dare contest the left. I do not think coercion a solution: the government who coerces diversity will one day coerce uniformity. But the furore does bespeak an outlook that cannot conceive itself capable of wrong-doing.

Prof. Gearty hints at more when he remarks*:*

> Her literature survey ("The state of the art and its discontents", pp. 9-24) oozes an unsettling disdain for much of what she has encountered in the course of her (immense) researches. To use two clichés that the perfectionist in her would never allow into the text, Parau "takes no prisoners" and is very happy to "burn her bridges" as she savages this or that *potential future patron* (pp.5-6, emphasis added).

I disavow both characterizations. Every word I have ever put to paper is about ideas, not *any* person. I understood myself to be building bridges to people isolated by Network discourses. Patronage implies beholdenness. If this is how Academe works, then it is no search for truth. I would add that I got on with all my interviewees, who often praised my preparation and insight. Elites are ego-centric (who isn't?). It is different when democracy is dormant; it ensconces elites above contestation, where human nature maximally damages itself and its fellows.

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